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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92061664
Party	Defendant BBK Pictures, Inc.
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Date	12/18/2015
Attachments	BBK Pictures Answer.pdf(46199 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Boston Iced Tea Company, Inc., Petitioner v. BBK Pictures, Inc., Registrant.	: : : : : : : : : :	CANCELLATION NO. 92061664 Registration No. 85884091
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BBK PICTURES, INC.’S ANSWER AND AFFIRMATIVE DEFENSES

Registrant BBK Pictures, Inc., (“Registrant” or “BBK”), by and through its undersigned counsel, hereby responds to Petitioner Boston Iced Tea Company, Inc.’s Petition to Cancel as follows:

With respect to the allegations in the preamble, BBK is without sufficient information to form a belief as to the truth of the allegations in the first paragraph of the Petition and therefore denies the same. BBK admits the allegations in the second paragraph of the preamble. BBK denies the allegations in the third paragraph of the preamble.

STATEMENT OF FACTS

1. Denied. Registrant has been the owner of the Mark since the application filing date. Further, Registrant filed the application for BOSTON TEA with a bona fide intention to use the mark in commerce. To the extent that Petitioner relies upon *Am. Forests v. Sanders*, 54 USPQ2d 1860, 1864 (TTAB 1999), *aff’d*, 232 F.3d 907 (Fed. Cir. 2000), Registrant states that this is a non-precedential decision that may not be cited in these proceedings.

2. Admitted.

3. Admitted.

4. Admitted in part; denied in part. It is admitted only that Petitioner filed an intent-to-use application for “MAGUIRE’S BOSTON ICED TEA” with the USPTO on March 22, 2013 to be used in connection with “beverages made of tea; beverages with a tea base; iced tea; tea-based beverages,” in International Class 033. Registrant denies that the examining attorney at the USPTO determined the mark to be entitled to registration, and clarifies that the examining attorney at the USPTO determined that the mark “appears” to be entitled to registration (emphasis added).

PETITIONER’S STANDING TO FILE

5. Admitted in part; denied in part. It is admitted only that on March 22, 2013 Petitioner filed an intent-to-use application with the USPTO to register its MAGUIRE’S BOSTON ICED TEA mark, and that the application was approved for publication on August 27, 2013. Registrant lacks knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining averments of this Paragraph, and therefore denies same.

6. Denied. The averments of this Paragraph state a conclusion of law to which no response is required. To the extent a response is required, Registrant denies same.

GROUND ALLEGED FOR CANCELLATION

7. Denied. Registrant filed the application for BOSTON TEA with a bona fide intention to use the mark in commerce. BBK Pictures, Inc. is the entity that owns the mark and BBK Pictures, Inc. has made use of the mark in commerce. Registrant controls the nature and quality of the goods sold under the BOSTON TEA Mark.

8. Denied. The averments of this Paragraph state a conclusion of law to which no response is required. To the extent a response is required, Registrant denies same.

9. Denied.

10. Denied. Registrant specifically denies Petitioner's statement that it "has not sold any of the goods listed in its application."

11. Denied.

12. Denied. The averments of this Paragraph state a conclusion of law to which to response is required. To the extent a response is required, Registrant denies same.

14. Admitted in part; denied in part. It is admitted that Registrant's products do not originate from the city of Boston, Massachusetts, nor are they sold in the Boston area. It is further admitted that Registrant is currently selling its goods only in Pennsylvania and New Jersey. Registrant denies the remaining averments of this Paragraph to the extent that they suggest that Registrant is not making sales of its products.¹

WHEREFORE, Registrant requests that judgment be entered in its favor and that this proceeding be dismissed with prejudice in its entirety.

AFFIRMATIVE DEFENSES

15. Further answering the Petition for Cancellation, Registrant avers as affirmative defenses that:

16. Petitioner fails to state a viable claim against Registrant.

17. Petitioner lacks standing to proceed in this Cancellation proceeding against BBK's registration.

18. Petitioner will not be harmed by the continued registration of Registrant's mark.

¹ Paragraph 13 was omitted in Petitioner's Petition for Cancellation and accordingly BBK's Answer and Affirmative Defenses has no Paragraph 13. Paragraph 14 in BBK's Answer and Affirmative Defenses corresponds with Paragraph 14 of Petitioner's Petition for Cancellation.

19. One or more of Petitioner's claims are barred by the equitable defense of laches, acquiescence, waiver or estoppel.

20. Petitioner has acquiesced in Registrant's adoption and use of the mark that is the subject of the petition for cancellation.

21. Registrant hereby gives notice that it may rely on any other affirmative defenses that may become available or appear proper during discovery and hereby reserves the right to amend this Answer to assert any such defenses.

RESPECTFULLY SUBMITTED,
GRIESING LAW, LLC

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Dated: December 18, 2015

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing BBK Pictures Answer and Affirmative Defenses has been served this 18th day of December 2015, on Roger N. Behle, Jr. Esquire, counsel for Petitioner Boston Iced Tea Company, Inc., via First Class Mail, postage prepaid, and electronic mail at the following address:

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